

Filed by: Mark Nagumo  
Administrative Patent Judge  
Mail Stop Interference  
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Alexandria Va 22313-1450  
Tel: 703-308-9797  
Fax: 703-305-0942

Filed 4 November 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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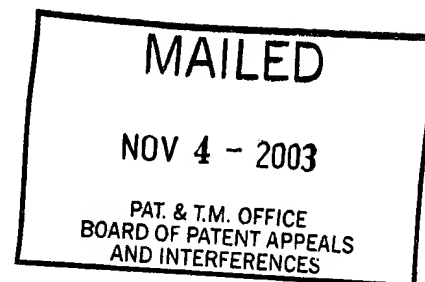
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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LEE JAMES BEELEY,  
KELLY PAINE, and ROBERT JAMES GODDEN  
Junior Party  
(Patent No. 6,187,560<sup>1</sup>),

v.

QINGYUN LIU  
and FANG CHEN,  
Senior Party  
(Application No. 09/081,737<sup>2</sup>).



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Patent Interference No. 105,166

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**NOTICE DECLARING INTERFERENCE**  
(37 CFR § 1.611)

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the application, patent, counts and claims designated as corresponding or as not

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<sup>1</sup> based on application 09/142,565, which has been accorded § 371 and § 102(e) dates of 30 June 1999. Patentee claims the benefit under 35 U.S.C. § 119 of EP 97-305,305 (filed 16 July 1997), GB 97-05614 (filed 18 March 1997), and GB 97-04551 (5 March 1997).

<sup>2</sup> Applicant claims the benefit of priority under 35 U.S.C. § 120 of 60/069,141 (filed 9 December 1997) and 60/047,179 (filed 20 May 1997).

corresponding to the count appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

**Part B. Judge designated to handle the interference**

Administrative Patent Judge Mark Nagumo has been designated to handle the interference. 37 CFR § 1.610(a).

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone conference call to set dates for taking action in the interference is scheduled for **10:30 a.m. on 7 January 2004** (the call will be initiated from the PTO).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See STANDING ORDER ¶ 10.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE. Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

**Part E. The parties involved in this interference are:**

**Junior Party**

Named inventors: Lee James Beeley, Great Britain  
Kelly Paine, Great Britain  
Robert James Godden, Great Britain

Patent: 6,187,560  
PCT filed 2 March 1998

Benefit (35 U.S.C. § 119) claimed:  
EP 97-305,305 16 July 1997  
GB 97-005,614 18 March 1997  
GB 97-004,551 5 March 1997

Title: Polynucleotides and polypeptides belonging to the uncoupling  
proteins family

Assignee: SmithKline Beecham plc (GB)

Accorded Benefit: EP 97-305,305 16 July 1997

Attorneys: See last page

Address: See last page

Senior Party

Named Inventors:   Qingyun Liu, USA  
                          Fang Chen, USA

Application:         09/081,737  
                              filed 19 May 1998

                          Benefit (35 U.S.C. § 120) claimed:  
                              60/069,141    9 December 1997  
                              60/047,179    20 May 1997

Title:                Human uncoupling protein 3

Assignee:            Merck & Co Inc.

Accorded Benefit:   60/069,141    9 December 1997  
                          60/047,179    20 May 1997

Attorneys:           See last page

Address:             See last page

**Part F. Count and claims of the parties**

**Count 1**

A purified polynucleotide encoding a protein comprising the amino acid sequence set forth in SEQ ID NO:2 of Beeley's 6,187,560 patent or SEQ ID NO:12 of Liu's 09/081,737 application.

The claims of the parties are:

Beeley:	1-12
Liu:	1-9, 16-19

The claims of the parties which correspond to Count 1 are:

Beeley:	10-12
Liu:	3, 17

The claims of the parties that do not correspond to Count 1, and therefore are not involved in the interference, are:

Beeley:	1-9
Liu:	1, 2, 4-9, 16, 18, 19

**Part G. Heading to be used on papers**

The following heading shall be used on papers filed in the interference. See STANDING ORDER ¶ 3.5.

Paper \_\_\_\_<sup>3</sup>

Filed on behalf of [name of party]

By: Name of lead counsel  
Name of backup counsel  
Street address  
City, State, and Zip-Code  
Tel:  
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Nagumo)

LEE JAMES BEELEY,  
KELLY PAINE, and ROBERT JAMES GODDEN  
Junior Party  
(Patent No. 6,187,560),

v.

QINGYUN LIU  
and FANG CHEN,  
Senior Party  
(Application No. 09/081,737).

Patent Interference No. 105,166

TITLE OF PAPER

<sup>3</sup> Leave a blank line because the board assigns the paper number.

**Part H. Summary of dates for taking action**

Times for taking action are set out in the following sections of the STANDING ORDER:

- ¶ 4: date for identifying lead and backup counsel.
- ¶ 5: date for identifying any real party in interest.
- ¶ 6: date for requesting copies of involved and benefit applications and patents.
- ¶ 7: date for accomplishing certain discovery.
- ¶ 8: date for filing clean copy of claims.
- ¶ 9: date for filing clean copy of claims in cases with drawings or claims containing a means plus function limitation.
- ¶ 10: date for filing list of proposed preliminary motions.
- ¶ 13.10.2: dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
- ¶ 14.1.1: date for objecting to admissibility of evidence.
- ¶ 14.2: date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
- ¶ 14.3: dates when cross-examination can take place.
- ¶ 15.2: dates for taking action with respect to settlement discussions.

**Part I. Order form for requesting file copies**

**FILE COPY REQUEST**  
Interference 105,166

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, ZIP code and telephone number  
(do not list a Post Office box because file copies are sent via commercial  
overnight courier).

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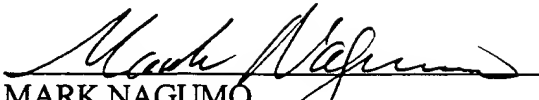
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Telephone, including area code: \_\_\_\_\_



**Part J. Signature of administrative patent judge**

  
MARK NAGUMO  
Administrative Patent Judge

Date: 4 November 2003

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in the preliminary motion phase of the interference

Copy of order used for setting times for taking action in the testimony and briefing phases of the interference

Copy U.S. Patent 6,187,560

Copy of claims of 09/081,737

Revised May 2003

cc (via overnight delivery):

Attorney for Beeley:

(real party in interest: SmithKline Beecham plc (GB))

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facsimile:  
e-mail:

Attorney for Liu

(real party in interest: Merck and Co. Inc.)

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Rahway, NJ 07065-0907

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Rahway, NJ 07065-0907

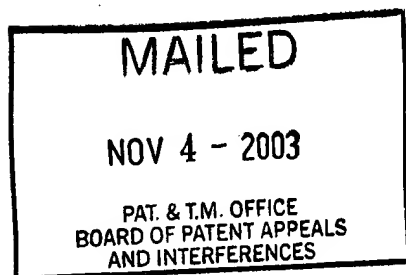
telephone: (732) 594-4000  
facsimile:  
e-mail:



## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231


Filed by: Judge Mark Nagumo  
Telephone: (703) 308-9797  
Facsimile: (703) 305-0942



Applicant: LIU  
Application No.: 09/081,737  
Filed: 05/19/98  
For: HUMAN UNCOUPLING PROTEIN 3  
Accorded benefit: Provisional applications  
60/069141, filed 12/09/97  
60/047179, filed 05/20/97

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,166.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
MARK NAGUMO  
Administrative Patent Judge

## INTERFERENCE DIGEST

Interference No.

105,166

Paper No. 15

Name: Qingyun Liu et al.

Serial No.: 09/081,737

Patent No.

Title: HUMAN UNCOUPLING PROTEIN 3

Filed: 05/19/98

Interference with Beeley et al.

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### FINAL DECISION

Board of Patent Appeals and Interferences, favorable Dated, 11-20-03

\_\_\_\_\_

Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

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\_\_\_\_\_  
\_\_\_\_\_

This should be placed in each application or patent involved in interference in addition to the interference letters.